

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Maldonado Analyst: Kristina E. North Bill Number: AB 790
Related Bills: See Legislative History Telephone: 845-6978 Introduced Date: February 22, 2001
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Employer Provided Health Care Credit/California Farmworker Health Care Protection Act of 2001/FTB Report to Legislature

SUMMARY

This bill would create an employer tax credit for providing health care or health insurance to farmworker employees.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to encourage employers of farmworkers to provide health care or health care insurance for their employees.

EFFECTIVE/OPERATIVE DATE

This bill is a tax levy and would be effective immediately upon enactment. The credit would apply to taxable years beginning on or after January 1, 2001, and before January 1, 2008.

POSITION

Pending.

Summary of Suggested Amendments

Department staff is available to assist the author's office to resolve concerns identified in this analysis.

ANALYSIS

FEDERAL/STATE LAW

Under federal and state law, an employer's contribution to an employee accident or health plan is not included in the employee's gross income. Employers are allowed to deduct premium payments to employee accident or health plans as ordinary and necessary business expenses.

Existing state and federal laws provide various tax credits that can reduce a taxpayer's tax liability dollar-for-dollar.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Alan Hunter for GHG

05/09/2001

Current federal and state laws do not provide credits for any health care costs. Prior **state law** would have provided a small-employer health coverage tax credit (SB 2260, Stats. 1988, Ch. 1521). However, the credit was repealed before becoming operative.

THIS BILL

This bill would allow a tax credit equal to 25% of the taxpayer's qualified expenses for the amount paid or incurred for preventive health care provided to employees who are qualified farmworkers. The credit amount would be limited to \$50,000 per taxpayer for each taxable year.

This bill would define:

- ◆ "preventive health care" as including periodic health evaluations, immunizations, and medical services necessary to treat and prevent the spread of contagious disease.
- ◆ "qualified expenses" as amounts paid or incurred for services provided by, or medicines or medical items prescribed or dispensed by, either a health care provider or for providing a health plan or preventive care insurance.
- ◆ "qualified farmworker" as an individual who is a non-union, agricultural employee; ineligible to receive publicly funded health care services; a California resident; and an employee of the taxpayer, all of whose services for the taxpayer are provided in this state.

This bill would not allow any credit or deduction for the expenses for which this credit is claimed.

Any excess credit may be carried over for eight years.

The Franchise Tax Board would be required to report to the Legislature on the number and dollar value of claimed credits. This report would be due December 1, 2006.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's staff to resolve these and other concerns that may be identified.

- ◆ For the purposes of audit, this department does not have the expertise to determine 1) "necessary and appropriate medical services to treat and prevent the spread of a contagious disease" or 2) what constitutes a "contagious disease". To ensure the author's intentions are achieved and to minimize disputes with taxpayers, it would be helpful if an entity with the necessary expertise could certify this information for the credit and provide the certification to this department.
- ◆ The terms "health plan" and "preventive care insurance" are included under the definition of "qualified expenses," but are not themselves defined. Additionally, some health plans do not include preventive care as a service and some preventive care insurance companies provide more preventive care than the treatment or prevention of a contagious disease. To ensure the author's intentions are achieved and to minimize disputes with taxpayers, an entity with preventive health care knowledge and ability could certify to the department the amount of expenses claimed by taxpayers that would meet with the author's intent.

- ◆ The bill limits the maximum allowable credit to \$50,000 per taxpayer for each taxable year. However, where the "credit" exceeds the \$50,000 credit limit, the bill would allow the excess to be carried over to reduce the taxpayer's tax liability for eight subsequent years. This carryover provision is inconsistent with the language limiting the maximum allowable credit to \$50,000. In addition, it is unclear from the language limiting the credit to \$50,000 each year whether the credit is intended to apply only to new expenditures subject to the credit or to limit carryover credits plus newly-claimed credits to this \$50,000 amount. Staff is available to assist in drafting language to clarify the author's intent.
- ◆ This bill defines a qualified farmworker as an individual who, at the time qualified expenses are paid, is not receiving publicly funded health care services "as verified" by the appropriate county office of health services. However, verification may be difficult for the taxpayer to obtain because 1) a county is not required to provide verification; and 2) a county may not have the information available regarding the receipt of publicly funded health care services by an otherwise qualified farmworker. To ensure the employer is allowed to claim the credit, the author may wish to modify this requirement to ensure that the employer can obtain the necessary verification.

TECHNICAL CONSIDERATION

The bill references clinics or health facilities licensed pursuant to Division 2 (commencing with Section 1220) of the Health and Safety Code, which covers a variety of facilities, such as child care centers and residential facilities for the elderly. The author may wish to narrow the reference to the chapters specifically describing clinics and health facilities.

LEGISLATIVE HISTORY

AB 2208 (Frusetta, 1999/2000), AB 1172 (Frusetta, 1999/2000), AB 2520 (Prenter, 1997/1998), AB 148 (Frusetta, 1997/1998), AB 2033 (Frusetta, 1995/1996) were nearly identical to this bill. AB 2208 and AB 2520 failed passage out of the Assembly Appropriations Committee. AB 1172 and AB 148 failed passage out of the house of origin before January 31st. The employer-provided farmworker healthcare credit was amended out of AB 2033.

OTHER STATES' INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York do not have a similar credit. These states were chosen for their similarities to California state law and/or similarities in population.

FISCAL IMPACT

With the resolution of the implementation considerations, this bill should not significantly impact the department's costs.

ECONOMIC IMPACT

This bill is expected to result in revenue losses as shown in the following table:

Revenue Impact of AB 790 Beginning 1/01/2001 Assumed Enactment After 6/30/2001 (In Millions)*			
	2001/2002	2002/2003	2003/2004
Personal Income Tax	-\$3	-\$4	-\$4
Bank & Corp. Income Tax	-\$3	-\$4	-\$4
Total	-\$6	-\$8	-\$8

*After rounding.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this measure.

The revenue impact of this bill would depend upon the number of employers who would incur qualified health-related expenses for employees who are qualified farmworkers, the average costs of qualifying expenses, and the tax liabilities of the employers.

For the analysis, employers that provide insurance would qualify for premium costs incurred and some segment of other employers would qualify for direct costs (immunization, etc.). According to a 1998 survey by the U.S. Department of Labor and University of California, 280,000 full-time equivalent non-unionized farm workers are employed in California. Second, the same survey shows that 5% of the 280,000 farmworkers are currently receiving health care insurance from employers. For the insured group of employees (14,000), it is assumed that the average qualifying premium costs would be \$150 per employee per month. For the uninsured group of employees (266,000) it is assumed that the number ineligible for publicly-funded health care and receiving some form of direct medical benefits from their employers (e.g., immunization, flu shots, etc.) is 20% (53,000), with an average benefit of \$50 per employee. It is assumed that on average 70% of the credit would be fully applied against available tax liabilities in any given year.

LEGAL IMPACT

This bill would require that a qualified farmworker be a resident of California to allow the taxpayer this credit. This residency requirement may be subject to constitutional challenge as discriminatory against nonresident farmworkers who are employed within California.

The credit already requires that farmworkers provide all of their services for the taxpayer within California, which may be sufficient to ensure that the credit is targeted to California workers.

POLICY CONCERNS

This new credit would require the deduction for qualified expenses to be reduced in order to eliminate the double benefit of receiving both the credit and the expense deduction. However, this adjustment would create a state and federal difference, which is contrary to the state's general conformity policy. However, this one-time adjustment would not establish an ongoing difference between federal and state measures of taxable income.

This bill would allow this credit only for taxpayers that employ "agricultural employees," resulting in different tax treatment for similarly situated taxpayers employing workers in different occupations.

LEGISLATIVE STAFF CONTACT

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